SOME OBSERVATIONS ON THE SOCIAL INSTITUTIONS OF THE ISRAELITES.

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1. THE word for pledge in Hebrew is עֵרָבוֹן, probably a Canaanitish expression from which is derived the Greek *ἀῤῥαβών*. By such a pledge Tamar made sure that Judah would send her the promised hire, Gen. 38:17. The corresponding verb is found in Neh. 5:3 (and also originally in vs. 2), where the poor Jews are obliged to yield up their sons, daughters, fields, vineyards, and houses as security to obtain money and grain.

Usually we find the same idea in the verb חבל with the noun חֶבֶל, which is connected with the root חבל "bind" (obligate). Dillmann, likewise, on Ex. 22:25, says: "One can, indeed, take a pledge as security for the thing lent, but if one takes the upper garment, it must be returned by sundown." Benzinger, *Archäologie*, p. 349, and others, hold the same opinion. It cannot be denied, however, that the thought secured through this translation is in and of itself not entirely satisfactory. For if the pledge furnishes security to the creditor we cannot really understand how he can return it at night. A glance at other passages where the root חבל occurs soon shows that in this place something else is intended. The verb is found in Prov. 20:16; 27:13; Job 22:6 with personal objects with the signification of "seize for a debt," *i. e.*, to take from the debtor a *penalty* if the debt is not paid. It occurs also with an impersonal object in the same sense in Amos 2:8: "They lay themselves down beside the altars upon clothes taken in pledge, and in the house of their god drink wine which had been paid as fines." The parallelism makes it clear that חֲבוּל in this place denotes the object which the creditor had taken from the poor in lieu of a debt. In this way Ex. 22:25 must also be explained. The justice of a pledge is not under discussion, but rather the humanity of the creditor

when the debtor has not been able to pay his debt. The same may be said of Deut. 24:6: "In case of an attachment thou shalt not take the mill of the debtor, for it is his means of life;" and in vs. 17: "Thou shalt not take the garment of a widow, if she is not able to pay." *Cf.* also Ezek. 18:16; Job 24:3.

The above-mentioned law of Ex. 22:25 is repeated in Deut. 24:12 f. But in the latter passage we do not find חבל but עבט. The most natural supposition is that this verb also signifies not a pledge of security but a penalty. And this is confirmed, too, by vs. 10 f., where it reads: "When thou dost lend thy neighbor any manner of loan, thou shalt not go into his house to take his pledge, but thou shalt wait without until he brings it to thee." This whole situation is that of an attachment (of the goods) of the poor rather than time an occasion when the poor man seeks a loan. The passage in Josephus (*Antiquities*, IV, 268) yields the same thought: *ἂν δὲ ἀναισχυντῶσι περὶ τὴν ἀπόδοσιν, μὴ περὶ τὴν οἰκίαν βαδίσαντας ἐνεχυριάζειν πρὶν ἡ δίκη περὶ τούτου γένηται*, etc.[1]

In consideration of this linguistic usage it is at least possible that חבל in the above-mentioned sense is connected with חבל "destroy." At any rate, a connection with the Arabic aḫbala and the Assyrian hubullu "tax" is of course obviously suggested.

Accordingly we cannot establish by the Book of the Covenant or by Deuteronomy that it was the custom among the early Israelites to give security to the creditor on the occasion of a loan.

It is, I judge, equally wrong to find proof in the Book of the Covenant that it was considered in the earliest times as a legitimate custom to demand *interest* of the debtor. As is well-known, in Deuteronomy and in the priestly laws this is expressly forbidden if the debtor is an Israelite. It would be, for this reason, somewhat remarkable if the Book of the Covenant permitted interest and forbade only unlawful interest without adding thereto a remark about the permissible interest. But a closer examination of the passage already considered, Ex.

[1] In modern laws we find many similar provisions, *e. g.*, it is not permissible in an attachment to seize the tools of a workman.

22:24, soon shows that the usual interpretation is not well founded. The passage is as follows: "If thou lend money to a poor farmer, thou shalt not be to him as a נֹשֶׁה; neither shall ye lay upon him usury." The change of number in this law undoubtedly denotes that the last sentence is a remark added at a later time, and that the original command read only as follows: "thou shalt not be to him as a נֹשֶׁה." But it does not follow from this that the original formulation of the command permitted interest and forbade usury, while a later hand, in consideration of the Deuteronomic specification, transformed the command into an absolute prohibition against receiving any interest.[2] The word נֹשֶׁה signifies rather one who brutally and relentlessly *exacts* debts, *e. g.*, in one case, where he seizes the poor in case of non-payment, or, in another case, where he compels him to hand over his sons as slaves. With this sense the word is found in 2 Kings 4:1; one of the wives of the sons of the prophets came sorrowfully to Elisha and said: "Thy servant, my husband, is dead, and thou knowest that he was a devout man; and now the נֹשֶׁה is come to take my two sons as slaves!" Likewise in 1 Sam. 22:2, "there were gathered together unto David all who had a נֹשֶׁה," *i. e.*, they who were oppressed by a נֹשֶׁה (*cf.* also Neh. 5:7). The point here is not regarding interest, but regarding the unmerciful demands made by the debtors. The upright Israelite, on the other hand, is to consider his relations to the debtor as a kind of benevolence, and to wait patiently if the latter cannot pay. The later interpolated phrase in Ex. 22:24 does not, therefore, change the original sense, but rather illustrates it, not incorrectly, by the prohibition against interest. If the poor man must pay, not only the money, but interest in addition, then he was, of course, irretrievably lost. Perhaps we may assume that the taking of interest was, in the main, unknown in the time of the Book of the Covenant, that only in later times was it introduced, and accordingly first prohibited in Deuteronomy. The two Hebrew expressions for the idea are נֶשֶׁךְ and תַּרְבִּית, and their significations are about as follows: נֶשֶׁךְ

[2] So, *e. g.*, WELLHAUSEN, *Komposition des Hexateuch*, 2d ed., p. 92; BENZINGER, *Archäologie*, p. 350.

(literally, "bite") denotes the discount from the loan, which the creditor himself retains, while the debtor, regardless of this amount, had to repay the full sum of the loan. On the other hand, תַּרְבִּית denotes the surplus with which on repayment of the loan he had to increase its amount.

2. The usual impression which we receive in reading the Old Testament is that the Israelite peasants and proprietors owned their land as private possessions. In addition to this there are several phenomena which prove that together with their private possessions they had a community possession, and that this last must be regarded as the more primitive order. It is well known that this phenomenon occurs elsewhere. In Russia the community possession, the so-called *mir*-husbandry, is still quite universal.[3] Also in Germany the village originally owned as one possession the fields, meadows, and woods which adjoined it; and later, after the individual peasants had secured their particular possessions, a part of the village property remained as commons. In villages possessing community property the fields determined on for cultivation were divided into as many parts of equal size and quality as there were full citizens in the village. The tracts were assigned by lot for a series of years, and at the expiration of this time were newly allotted. And even later, when the several parts of the common possession had become individual property, several facts remained to remind one of the earlier arrangement, *e. g.*, the mutual rights of pasturing on the fallow fields, the fixed succession of the sowing and of the fallow year, the mutual help in field work, the prohibition against changing the cultivated fields into meadows, etc.[4]

It is of special interest to find in Palestine even today similar customs, but with peculiar modifications. The land here falls essentially into two parts. The territory immediately surrounding the villages is private property (mulk) and as such is inherited or can be given away; it is usually occupied as garden

[3] MAINE, *Ancient Law*, p. 267; FENTON, *Early Hebrew Life*, p. 64.

[4] *Cf.* VON MAURER, *Geschichte der Dorfverfassung in Deutschland*, 1865–6, Band I, pp. 34–6, 96, 304 f. On the other hand no such arrangement was found among the Arabs. *Cf.* WELLHAUSEN, *Reste Arab. Heid.*, 2d ed., p. 107 f.

land. The cultivated fields, on the other hand, are government possessions (Miri, from Emir), but are leased and tilled by the whole village. Every year it is determined how many villagers can make claim to a field possession, and how large a portion shall fall to each, in accordance with the size of his establishment. In accordance with this order the cultivated land is divided into equal parts, which are designated by special names.

The names are written on little pebbles (ğaral, Hebrew goral), and these stones put in a bag. All the inhabitants of the village now arrange themselves in a half circle about the Imâm or chief man. The lot is determined as follows: A little boy under five years of age takes one of the stones out of the bag, while another boy mentions the name of one of the citizens. This act is greeted by the citizens with the cry Allâh jaḳûm biğaralî, "May God care for my lot." From the division made in this way there is no appeal. A stranger could become party to the allotment only with the permission of the whole village. All the fields which lie fallow are public commons.[5]

There are certain traces which prove that similar customs were in vogue among the early Israelites. In Micah 2:5 the opponents of the prophet give vent to their wrath against his threats as follows: "Therefore thou shalt have none that shall cast the line by lot for thee in the congregation of Jahve (קַהַל יהוה)." This expression presupposes that every member of the people possessing full rights was a party in the division of the land, which occurred in the congregation of Jahve, *i. e.*, in the individual Israelite assemblies. With this passage Wellhausen[6] doubtless rightly connects Jer. 37:12, where Jeremiah leaves the capital city and betakes himself to the land of Benjamin לחלק משם בתוך העם, *i. e.*, to be a party to the allotment of the land to the members of the tribe. Furthermore, the beautiful picture in Ps. 16 is clearly based on such a custom. The enemies of the singer have chosen the world with its idols, the singer alone has chosen the true God as his part. He

[5] *Cf. Palestine Expl. Fund. Quart. Statement*, 1894, p. 191 f., and the slightly different representation in *Zeitschrift d. Deutschen Palästina-Vereins*, IV, p. 70 f.

[6] *Skizzen*, V, 135; *Israel. und jüd. Geschichte*[3], p. 89.

knows that he has received the better part which he expresses as follows: "The lines are fallen to me in pleasant surroundings, and over my lot I rejoice." Perhaps the variously explained תמך in vs. 5 of this psalm expresses a similar thought to the above-mentioned cry of the modern inhabitants of Palestine at the allotment of the common land (ḳâma bi), so that we have here an ancient custom faithfully preserved down to the present time. Finally, the manner of expression, not to have lot and part with someone (or in something) (2 Sam. 20:1; 1 Kings 12:16; Ecc. 9:6; *cf.* Ps. 50:18) was connected originally with such a disposition of the land by lot as a proof of citizenship.

What relation in later times the common land sustained to the particular possessions of individuals cannot be determined. The pasture ground remained common property longest, while the cultivated ground gradually became the private possession of individuals. At any rate, it is clear that the pasture ground, which, according to the priestly laws, should belong to the Levitical cities (Num. 35:2 f.), is to be regarded as common property. And when in Josh. 21:11 f. this migraš is distinguished from the "fields (שָׂדֵה) of the city," this is, of course, a later adjustment of older but contradictory statements; but the distinction is itself suggested to the author of this passage by the actual customs in existence in his day.

The insight which we have had in this way into the oldest conditions of Israelitish ownership of land puts us in position better and more correctly to understand other phenomena of Israelitish antiquity. Right here, first of all, belongs the so-called ge'ulla or redemption duty of the Israelite. In the laws only a single hint of this institution is found, but the remaining writings of the Old Testament contain occasional references which give us a sufficiently clear picture of the custom. The Go'el was, according to Hebrew linguistic usage, the nearest kin of an Israelite who for any reason could not secure his own rights; and on whose behalf it was the duty of the Go'el to step in and redeem him or his interests. To this duty belonged also the so-called ge'ullâ of land ownership. When Jeremiah sat in

the prison his nephew Hanan'el of Anathoth came to him and invited him to buy of him a piece of land in their native city, because the prophet had the מִשְׁפַּט הַגְּאֻלָּה, *i. e.*, the right of redemption. In spite of the desperate conditions, Jeremiah at once consents and buys the piece of ground for seventeen shekels of silver, the bargain being lawfully concluded by a contract drawn up and sealed (Jer. 32:8 f.). This story, whose prophetic meaning does not concern us in this connection, teaches that the right of redemption was in order when an Israelite for any reason, especially of course because of poverty, found himself compelled to alienate a part of his possessions. We understand this incident entirely erroneously if we speak of the "rights" of the kin. It was simply a duty, but a duty not toward the impoverished alone, for indeed he loses a part of his real estate, together with his civil rights which attach thereto, but a duty toward the community or toward the clan, הַמִּשְׁפָּחָה, 2 Sam. 14:7, which was settled in the particular neighborhood, and in whose interest it was important that no part of the land should fall into strange hands. This is simply an after-effect of the earlier common possession where the clan as such owned real estate, while the individual members possessed only the right of use.

We meet a second example in the Book of Ruth, whose contents become entirely clear when we explain it after the analogy of the passage in Jeremiah. The beginning of the story is well known. Naomi, who became a widow in Moab, and whose sons also died, returns with her daughter-in-law Ruth to Bethlehem. Ruth, who is kindly treated by a relative of her husband, betakes herself in the night, in accordance with the advice of her mother-in-law, to the threshing-floor where Boaz is sleeping. As he awakes she makes a request of him, "Spread the border of thy garment over me, for thou art Go'el!" This is a primitive symbolic custom whereby the design to marry is expressed.[7] Boaz praises her action and is pleased to

[7] *Cf.* ROBERTSON SMITH, *Kinship and Marriage in Early Arabia*, p. 87, following Tabarî: "In the Yâhilîya, when a man's father or brother or son died and left a widow, the dead man's heir, if he came at once and threw his garment over her,

grant her request; there is, however, another relative who stands closer, and upon whom the fulfillment of the kinsman's duty rests. What follows is intended to show how Boaz, in the tenderest and most considerate manner, introduced his advice without injuring the rights of the nearer kinsman. On the following morning he betakes himself to the meeting place at the gate of the city, and waits here until the relative above mentioned comes along. When he sees him, he says to him: "The field that belonged to the deceased husband, she is willing to sell." Usually מָכְרָה is translated "she has sold," so that the Go'el was obliged to buy back the field from the present owner. But this is not only contrary to the analogy of the passage in Jeremiah, but also to that of the clear meaning of the narrative itself. For according to vss. 5 and 9 the field is to be bought out of the hand (מִיַּד) of Naomi, *i. e.*, she is herself the owner of the field and is now, for the first time, desirous of selling it.[8] There is, indeed, an archæological difficulty in this event which remains the same with either translation. According to the customary law of the early Israelites the woman was not an heir. Only the son, or, in case there were none, the male relatives had the right of heirship. For this reason the widow of the very rich Nabal, Abigail, forsook her dwelling place to follow her new husband, David, 1 Sam., chap. 25; and for a similar reason the inhabitants of Tekoa, 2 Sam. 14:7, wished to slay the son of the widow, in order to destroy the heir.[9] Naomi had, however, lost her husband and her two sons, in which case the possessions of Elimelech really should have reverted to the next male relative. The story in the Book of Ruth can accordingly

had the right to marry her under the dowry (m a h r) of [*i. e.*, already paid by] her [deceased] lord, or to give her in marriage and take her dowry. But if she anticipated him and went off to her own people, then the disposal of her hand belonged to herself."

[8] We must conceive of the perfect מָכְרָה as a perfect of determination unless we prefer to read it as a participle מֹכְרָה.

[9] Only in respect to the female slaves who were given to the bride at the wedding does she appear to have had full property rights, and these belonged to her, too, after the death of her husband. Instead of male relatives, the daughters, in specific cases, according to the priestly laws, can be their father's heirs.

be explained only on the supposition that Elimelech, before his death, had in some way secured for his wife the possession of his realty in Bethlehem, a proceeding that according to later Jewish custom indeed was quite possible.[10] After Boaz had related to the Go'el the purpose of Naomi, the latter expressed himself—as Jeremiah above—as at once ready to fulfill his redemption duty and to buy the field. Now Boaz adds thereto that the field can be bought only on the condition that the buyer also marries (*i. e.*, buys) Ruth, in order to maintain he name of Elimelech on his heritage. That is, the oldest son whom Ruth should bear in this marriage is to be regarded as son and heir of Elimelech, and the field shall later belong to him. Thereupon the relative answered: "I cannot fulfill the redemption duty, for I would thereby damage (הַשְׁחִית) my own heritage." This refusal can be explained on the ground that the Go'el ran a risk by that stipulation of losing the purchased field at some later time without any compensation; but since he is to retain possession of the field until the first son born of Ruth shall have become of age, this could scarcely have been called a damage to his own possessions, and so it seems to me probable that the answer of the relative is only a courteous circumlocution for the thought that he did not wish to marry Ruth. Such considerate indirection at any rate would be genuinely oriental. Boaz, having now acted according to the national custom, buys the field from Naomi, and marries Ruth whose oldest son became thereby the heir of Elimelech.

We see then that the whole story in the Book of Ruth agrees exactly with what we meet in Jeremiah, and that the ge'ullâ

[10] According to the later Jewish law (*cf.* SAALSCHÜTZ, *Mosaisches Recht*, pp. 743, 746 f.) it was the duty of the heir to care for the widow; as her own property she received only what she brought with her in her marriage, and what her husband had presented her in the ketuba. An example of the testator's right to dispose of his property freely we find in Job (42:15) where Job makes his daughters heirs with his sons. For the corresponding customs among the old Arabs, see ROBERTSON SMITH, *Kinship and Marriage*, p. 95 f. In Medina the widows inherited nothing, neither did sisters or daughters—a thing, however, which Mohammed changed. The widow Chadîǧa in Mekka owned rich possessions, on which Robertson Smith remarks: "She may have received it through her former husband by a *donatio inter vivos* or even by will."

here is also simply a duty toward the community, which in the first place by a special modification becomes an act of kindness toward Elimelech. After these results we are justified in expecting a repetition of these facts in a third passage where the ge'ullâ occurs, in the law of Lev., chap. 25. And this is the case, according to my understanding, where we ought not to allow ourselves to be led astray by the obscurity which results from the mingling of earlier and later regulations in this chapter.

The law for the year of jubilee (Lev., chap. 25)—theoretically regarded, one of the greatest social conceptions—consists of two parts. The first part treats of property relations, the second of the personal freedom of the Israelites. In the second part the customs are simplest. If an Israelite is so impoverished that he must sell himself, there are two courses open to him: he either sells himself to an Israelite, or to a non-Israelite who lives in Canaan and has here acquired wealth. In the first case he is not to be counted as a real slave, but only as a penniless workman, and in the year of jubilee, which occurred every fifty years, he again received his freedom gratis. If, however, he should sell himself to a stranger, then his lord is obliged to set him free at any moment when he himself or his nearest relative can pay the necessary sum of money; and in either case he receives his freedom in the year of jubilee. In this way the whole status of the Israelite slave is modified, for he is not really sold, but only rented for a period of from one to forty-nine years; on this account the amount of money to be paid back becomes less each year, until in the year of jubilee it entirely vanishes. If we now turn to the first part of the law for the year of jubilee, where the property relations are regulated, we find here two distinct cases. In case an Israelite is obliged to sell a field and no redeemer is present, the same specifications as for slaves are in force; the realty is not truly sold, but rented for from one to forty-nine years, and can be bought back from the buyer at any time, the price at which it can be bought back decreasing yearly, until the seller in the year of jubilee receives back his property gratis. An exceptional rule was in force regarding the houses in the walled cities (excepting the Levitical cities)

because here the right of buying back lasted only one year, and the houses in the year of jubilee were not restored to their former owners. Verse 25 deals with the case in which a redeemer is at hand. This is usually translated as follows: If thy brother is impoverished and sells some of his property, then shall his redeemer that is next to him come, *and shall redeem that which he has sold*—that is, the same conception that in the history of Ruth we have rejected as erroneous. In this case it would appear to be more firmly established because of the analogy of the laws regarding slaves in vs. 47 f. But nevertheless this is mere appearance. Verse 48 says expressly that the slave may be redeemed *after he has sold himself;* but this addition is lacking in vs. 25, where the consecutive perfect וּמָכַר can just as easily signify *if he must sell.* And that this is in fact the thought in this place is clear from the statement: "his redeemer shall come *to him,*" while at the redemption he must go to him who had previously bought the property.[11] It should be noted further that the Go'el should *buy* the property, but not that he should restore it to the former owner, nor that he should give it back in the year of jubilee. Everything points to the result that the ge'ullâ here must be understood just as in the other passages, *i. e.*, the redeemer does not buy the realty in order to return it to the impoverished, but to hold it for the clan or for the community. It follows further that the specifications of this ge'ullâ are not coördinated with those of the year of jubilee, and that the author of this law had simply adopted the old ge'ullâ custom as it was, so that his regulation of the property relations for the year of jubilee was only in force when the redemption in the earlier sense had not taken place. In other words, there are found in the laws for the year of jubilee two different principles; the one has in mind the interest of the clan or village community (vs. 25), while the other is to protect the personal possessions of the individual. The specifications regarding slaves, on the other hand, concern only the interests of the individual. This inconsistency of the laws of

[11] The translation of the words וּבָא אֶלָיו in the translation of Kautzsch by: *er soll für ihn eintreten,* is arbitrary.

the year of jubilee is but a new proof of the meaning of the old redemption custom and of the tenacity with which they clung to it.[12]

After we have discovered in this manner numerous traces of the old economy of the community, there remains the question whether the sabbatical year of the Israelites can be considered as a remnant of these old conditions. Wellhausen holds this view.[13] According to his conception the release required in the older laws (Ex. 23:10 f.) does not refer to the land but only to the harvest, so that in this year it was plowed and sown, but the harvest belonged in common to the entire population, "a limitation of the private ownership of realty for the good of the whole community." He holds also that this period was reckoned separately, not only for the individual owners, but for the individual fields of the same owner. A decision in reference to this last point is very difficult, but the conception of the seventh year as an absolute terminus seems, to me at least, to be more probable than the conception of Wellhausen and many others. Finally, on the other hand, the supposition of Wellhausen and Hupfeld that the fields were tilled in the seventh year, yet the harvest belonged to all Israelites in common, may be correct. The chief thing in this law is doubtless the right of the penniless to share in the harvest; if the law pertained only to the voluntary growth of the soil, then the population would be poorly cared for, because it states that the remnant should fall to the animals. If we conceive of this law as Wellhausen does, it reminds us less of the customs of the village community already described than of the fact that the Israelites were not original inhabitants of their land, and that originally all the members of this immigrated people had the same claim to the use of the land, an equality which had gradually been lost, but was in this year to be temporarily restored. It remained for the priest

[12] That the law in Lev., chap. 25, is made up of different layers of older and later material is a fact recognized by many. *Cf., e. g.*, DRIVER, *Einleitung in das Alte Testament* (German ed.), p. 58 (Engl. ed., p. 53); BAENTSCH, *Das Heiligkeitsgesetz*, p. 53 f.

[13] *Prolegomena*, 1883, p. 122 f.

code to construct out of this ancient law a new one, according to which in the seventh year the ground shall not be tilled, so that the land may enjoy a Sabbath's rest. That the penniless and even the animals could enjoy gratis the voluntary growth of the soil acquires, when viewed as a remnant of the older law, a secondary meaning (Lev. 25:1–7).